

April 3, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Transportation Road Services File No. **V-2344**
Proposed Ordinance No. **1999-0374**

EDNA SCHAEFFER
Petition for Road Vacation

Location: A portion of Lake Alice Road, west of David Powell Road
and northeast of Cemetery Road.

Petitioner: Edna Schaeffer, *represented by*
Dwight R. Schaeffer, Attorney in Fact
6902 – 96th Avenue SE
Mercer Island, WA 98094

King County: Department of Transportation, Road Services Division
represented by **Tommy Burdette**
201 South Jackson Street
Seattle, WA 98104-3856
Telephone: (206) 296-3731
Facsimile: (206) 296-0567

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation
Department's Final:	Approve road vacation
Examiner:	Approve road vacation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item No. V-2344 was received by the Examiner on August 25, 1999.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2344 was opened by the Examiner at 9:35 a.m., August 25, 1999, in the Fifth Floor Conference Room of the Union Bank of California Building, 900 – 4th Avenue, Seattle, WA 98104, and closed at 9:38 a.m. on March 23, 2001. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	A portion of Lake Alice Road located in the vicinity of Fall City. Thomas Bros. on the east half of page 599.
Right of way classification:	"D"
Area:	18,300 square feet
Compensation:	\$200

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the August 25, 1999 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. The public hearing on the Schaeffer road vacation petition was opened on August 25, 1999. The proceeding was continued in order to obtain further information on potential trails use of the property from the County Parks Department. A request for an indefinite continuance was submitted by the Petitioner in November, 1999 for the purpose of attempting to negotiate a purchase agreement with the Parks Department. No agreement had been reached between the Petitioner and the Parks Department for purchase of the Schaeffer property by the end of December, 2000, and the Examiner issued a notice on January 22, 2001 rescheduling the petition for hearing.
4. The Schaeffer property is a long, narrow remnant parcel that is bordered up-slope on the west by the Fall City Cemetery and down-slope to the east by the David Powell Road. It is wooded and extremely steep, with the only level portion being the old road bed for Lake Alice Road that has been cut into the hillside. Overall, the parcel is more than 800 feet long, but in most locations less than 100 feet wide. It comprises an irregular, approximately 2 acre sliver that appears to have been cut off from its parent parcel further east by the construction of the David Powell Road.

5. The on-site portion of the Lake Alice Road proposed to be vacated is 30 feet wide and approximately 700 feet long. It begins at the intersection of Lake Alice Road with Southeast 47th Street at the south end of the Schaeffer parcel, then runs down-slope to the north until it intersects the David Powell Road. The Road Services Division staff report provides the following historical information:

“Searches of the King County records indicate that the Lake Alice Road was petitioned for establishment as A. J. Bush Road, County Road 505 on April 18, 1899. The road was used to provide public access to the Northern Pacific Railroad depot located to the south in Section 22...and to the Fall City Cemetery from the Preston-Fall City Road. The public use of the road continued even after construction of County Road 1397 (David W. Powell Road) which was completed in 1930....A 1964 aerial photograph shows that after County Road 1397 was opened for public use, the Lake Alice Road (A. J. Bush Road, County Road 505) was still used for access to properties south of the Fall City Cemetery.”

6. The examination of County records by the Road Services Division did not uncover, however, any evidence that this portion of the Lake Alice Road was ever formally conveyed or dedicated to King County. Notwithstanding this gap in the public record, the staff report states that, “the Road Services Division assumes the public acquired prescriptive rights in this portion of Lake Alice Road in accordance to the RCW 36.75.070, ‘Highways worked seven years are county roads,’ and RCW 36.75.080, ‘Highways used ten years are county roads.’”
7. In its current state, the portion of Lake Alice Road that traverses the Schaeffer parcel is barricaded at both ends and is no longer subject to vehicular use. Nonetheless, the paved portion of the road still exists largely intact and is used by area residents as a foot trail connecting Lake Alice Road to the David Powell Road. In opposition to the road vacation petition, a number of area residents offered testimony to neighborhood use of the petitioned portion of Lake Alice Road as providing a safer and shorter pedestrian link between the Lake Alice neighborhood and Fall City. As stated in an e-mail from Neil and Susan Gronlund, the Lake Alice Road section on the Schaeffer parcel provides a safe shortcut between downtown Fall City and Lake Alice Road:

“We bypass a long section of the dangerous Fall City-Preston Road, which has inadequate shoulders between drainage ditches and 45-plus mph vehicles. This road to the train station (1889) partially collapsed in the Alaska earthquake of 1964. It has been continuously used since then by pedestrians, bicyclists, and equestrians, many using it as access to the Lake Alice trailhead. Local neighbors have maintained this trail over the years. Slopes are steep enough that the vacation would not allow the site to be used for building.”

This assessment of the value of the Lake Alice Road trail connection was also supported by letters from neighborhood residents Sue Ellen Holbink and Wendy Discher. Looking at area maps, pedestrians who walk from the Lake Alice area to Fall City using the trail connection at issue are able to avoid walking along approximately 1,500 feet of arterial frontage on the Preston-Fall City Road, eliminating as well the same distance from the overall journey.

8. The position of the Parks Department in this matter has been ambivalent. Initially, the Department recommended approval of the vacation request. After learning, however, of the neighborhood use of the right-of-way as a trail, Tom Eksten of the Parks Department e-mailed the Road Services Division the following message:

“In Parks’ previous reply, we were unaware that a portion of the vacated r/w could be used as a community connector, via Lake Alice Road, to our regional trail, and that it was, in fact, being used for that purpose. Connecting the community of Fall City to the trail is a goal for us, and is now a County policy with the adoption of the Fall City Sub-area Plan amendment to the Comprehensive Plan, of earlier this year. With this new information, we would ask that in order for King County to fully explore this as a possible connection, that at least a public access easement be retained on the r/w requested to be vacated.”

9. Due to the narrow width of the Schaeffer parcel and the pervasive steep slopes that characterize it, reserving an access easement would defeat the purpose of the petition. If the site is buildable at all, construction within the existing road right-of-way will be a necessity, thus precluding a concurrent public trail use.

CONCLUSIONS:

1. The Petitioner, through her son Dwight Schaeffer, has primarily argued that the road vacation should be granted because the County’s legal claim to the Lake Alice Road right-of-way cannot be documented and may therefore be subject to challenge within a quiet title action. The Road Services Division’s support of the vacation petition appears to be at least in part based upon the perceived weakness of the County’s title claim to the right-of-way: “Because King County has never received a deed for this road right-of-way and records are scarce as to County maintenance and public use, there’s a question as to what public rights exist across the proposed vacation area.”
2. Whatever the strengths or weaknesses of the County’s legal claim to title in the section of Lake Alice Road right-of-way subject to the Schaeffer petition, a road vacation proceeding is not the proper forum for deciding real property ownership issues. Jurisdiction to determine the title to real property is placed exclusively within the Superior Court. More critically, a road vacation petition assumes, as a necessary premise, that there is a County right-of-way to vacate. The existence of the County right-of-way is a necessary predicate to a road vacation proceeding, and no authority exists to vacate a right-of-way unless the right-of-way actually exists.
3. The standard for reviewing a road vacation petition is stated at RCW 36.87.060 (1):

“If the county road is found useful as a part of the county road system it shall not be vacated, but if it is not useful and the public will be benefited by the vacation, the county legislative authority may vacate the road or any portion thereof.”
4. The record is clear that the section of Lake Alice Road subject to the Schaeffer petition is no longer a useful part of the County road system for the accommodation of vehicular traffic. The only question to be decided here is whether the public will be benefited by the vacation. Viewed

in the broadest context, on the positive side of the ledger the vacation will enrich the County coffers to the extent of a few hundred dollars in tax revenue each year. On the negative side, neighborhood residents in the Lake Alice area will lose a safe and convenient trail connection into Fall City and to the County's regional trail network. Although not directly implicated in this equation, the remnant Schaeffer parcel, with its steep slopes, is probably unbuildable under current County regulations and can only be constructed after issuance of a sensitive areas variance or reasonable use exception.

5. Reviewing the statutory language and the relevant case law, it is our somewhat reluctant conclusion that the "public benefit" language contained in RCW Chapter 36.87 is not intended to create a separate statutory test for granting a road vacation. The basic test is only whether the petitioned right-of-way still forms a useful part of the County road network. If it does not, the Petitioner is entitled to an affirmative decision, notwithstanding that other publicly valuable non-road uses for the right-of-way may exist. While reserving an easement right for a trail use is normally appropriate where it can be done so without defeating the purpose of the petition, in the current instance both topography and the narrow width of the parcel preclude concluding that a trail easement reservation can co-exist compatibly with approval of the vacation request.

Finally, there is also the possibility that through years of use members of the public may have obtained a prescriptive right to trail use of the Lake Alice Road right-of-way. While this is a legal and factual question beyond the scope of this proceeding, it may be one that affected members of the public may wish to pursue.

RECOMMENDATION:

APPROVE proposed Ordinance No. 1999-0374 to vacate the subject road.

RECOMMENDED this 3rd day of April, 2001.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 3rd day of April, 2001, to the following parties and interested persons:

Steve Densly	Greg Borba	Roderick E. Matsuno
Wendy Discher	Tommy Burdette	Ronald J. Paananen
Fall City Water District	Don Ding	Dave Preugschat
Neal and Susan Gronlund	Thomas Eksten	Lydia Reynolds
Sue Holbink	Dennis Gorley	Faith Roland
Dwight & Christine Schaeffer	Kristen Langley	Charlie Sundberg
Edna Schaeffer	Larry R. Underdahl	Joe Wilson
Jason VanNort		

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before April 17, 2001. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before April 24, 2001.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.